Entered on Docket
December 16, 2005
GLORIA L. FRANKLIN, CLERK
U.S BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

The following constitutes the order of the court. Signed December 16, 2005

Marilyn Morgan
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

LEE F. CHAPMAN, Debtor.	Case No. 04-52528-MM Chapter 7 **MEMORANDUM DECISION AND ORDER ON MOTION TO AVOID JUDICIAL LIEN**

UNITED STATES BANKRUPTCY COURT
For The Northern District Of California

INTRODUCTION

In this lien avoidance motion, the issue before the court is one of statutory construction of 11 U.S.C. 522(f)(2)(A). More specifically, the question is whether the language "the debtor's interest in the property" requires that computations with respect to jointly owned property be based upon only the debtor's share rather than the value of the entire property.

FACTUAL BACKGROUND

Lee Chapman filed this Chapter 7 case on April 21, 2004. His wife, H. Kaye Chapman, did not join in the petition. Together, they owned the real property commonly known as 3160 Dorcich Street, San Jose, California as of the petition date. Chapman listed the market value of the real property as $850,000 and claimed a homestead exemption of $75,000 pursuant to the California Code of Civil Procedure. The real property was encumbered by a first deed of trust in the amount of $550,000 held by Washington Mutual, a

second deed of trust in the amount of $50,000 held by Chase Manhattan Bank, and an abstract of judgment in the amount of $165,673.27 recorded by Caletti Associates, L.L.C. during the preference period.

The Chapter 7 Trustee, John Richardson, obtained court authority to sell the real property for $900,000. Rather than litigating whether the property was community property or a joint tenancy, Richardson stipulated with Kaye Chapman that the estate would receive 52% of the net proceeds of sale, and Kaye Chapman would receive 48% of the net proceeds. Richardson also stipulated with Caletti Associates that the property could be sold free and clear of the Caletti Associates judgment lien with its interest to attach to the proceeds of sale. Chapman seeks to avoid the judicial lien of Caletti Associates pursuant to § 522(f). There is no objection to the motion. Chapman submits that the value to be used in the computation of impairment of his exemption should be the sales price, $900,000.

LEGAL DISCUSSION

The Bankruptcy Code authorizes the debtor to avoid certain liens pursuant to § 522(f)(1)(A), which provides in pertinent part:

> (f)(1) [T]he debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled . . . if such lien is --
>
> (A) a judicial lien . . . .

Based on a division in caselaw of what constitutes an impairment, the section was amended in 1994 to clarify when a lien is impaired by providing a simple mathematical formula. In re Kolich, 328 F.3d 406, 408 (8th Cir. 2003). Section 522(f)(2)(A), which was added by the Bankruptcy Reform Act of 1994, provides:

> (f)(2)(A) [A] lien shall be considered to impair an exemption to the extent that the sum of --
>
> (i) the lien;
> (ii) all other liens on the property; and
> (iii) the amount of the exemption that the debtor could claim if there were no liens on the property;
>
> exceeds the value that the debtor's interest in the property would have in the absence of any liens.

Now, however, there is a division of authority among the courts that have considered application of the amendment to jointly owned property. See In re Freeman, 259 B.R. 104, 110-12 (Bankr. D.S.C. 2001) (comparing the two lines of cases). One line of cases applies the plain meaning of § 522(f)(2)(A) and construes "the debtor's interest in the property" to refer only to the debtor's partial interest. These courts have held that the formula requires that the full amounts of all liens and the debtor's exemption be deducted from the value of the debtor's partial interest in the property rather than from the value of the entire property. In re Cozad, 208 B.R. 495 (B.A.P. 10th Cir. 1997); Summit Bank v. The Vessel "Harbor Light," 260 B.R. 694 (D.N.J. 2001); In re Piersol, 244 B.R. 309 (Bankr. E.D. Pa. 2000); In re Moe, 199 B.R. 737 (Bankr. D. Mont. 1996).

The other line of cases holds that application of the plain meaning of § 522(f)(2)(A) is absurd and uses a different formula. Courts adopting this approach first calculate the net equity in the property by deducting the full amount of all consensual liens from the total value of the property to determine whether any equity remains for the debtor. The amount of the homestead exemption is then deducted from the debtor's interest to determine impairment. These cases assert that a literal application of § 522(f)(2)(A) has the effect of creating a windfall for the debtor at the expense of a lienholder whose lien is avoided. In re Miller, 299 F.3d 183 (3rd Cir. 2002); In re Lehman, 205 F.3d 1255 (11th Cir. 2000); In re Nelson v. Scala, 192 F.3d 32 (1st Cir. 1999); In re Ware, 274 B.R. 206 (Bankr. D. S.C. 2001); In Re Dolan, 230 B.R. 642 (Bankr. D. Conn. 1999). The theory relied upon by these courts is that the plain meaning produces a result not intended by Congress. They cite to the maxim of statutory construction that "the plain meaning of legislation should be conclusive, except in the 'rare cases [in which] the literal application of a statute will produce a result demonstrably at odds with the intentions of its drafters.'" United States v. Ron Pair Enterprises, Inc., 489 U.S. 235, 242 (1989)(*quoting* Griffin v. Oceanic Contractors, Inc., 458 U.S. 564, 571 (1982)).

The Ninth Circuit has not addressed the issue of joint ownership in a case filed since the 1994 amendments became effective. In a case commenced before the effective date of the amendment, In re Nielsen, 197 B.R. 665 (B.A.P. 9th Cir. 1996), the Bankruptcy Appellate Panel held that where the debtor jointly owns property with a third party, the court must deduct all liens and the homestead exemption from the total value of the property to determine whether surplus equity exists to which a lien can attach. Unhappily, the

Nielsen case relied in part upon In re Chabot, 992 F.2d 891 (9th Cir. 1993), a decision that the amendment was expressly designed to overrule. H.R REP. NO. 103-835, at 53 (1994), *reprinted in* 1994 U.S.C.C.A.N. 3340, 3362. As a result, the reasoning of Nielsen has been superceded.

The courts that have departed from the plain meaning of § 522(f)(2)(A) have focused on the concern over an unintended windfall to the debtor. In reaching its decision in In re Lehman, 205 F.3d 1255, the Eleventh Circuit looked beyond the plain language of the statute to the legislative history to the 1994 amendment, which noted that the amendment adopted the formula in In re Brantz, 106 B.R. 62 (Bankr. E.D. Pa. 1989). H.R REP. NO. 103-835, at 52 (1994), *reprinted in* 1994 U.S.C.C.A.N. 3340, 3361. Significantly, however, Brantz did not involve jointly owned property. As a result, the Eleventh Circuit's reliance on the legislative history is misplaced because it is based upon the false premise that the Brantz formula extends to cases involving jointly owned property.

Since these circuit court decisions, the Supreme Court has issued a strong mandate not to rewrite otherwise plain legislation from the bench. See Lamie v. United States Trustee, 540 U.S. 526 (2004)(plain meaning applied notwithstanding apparent legislative drafting error). Applying the rules of statutory construction, courts must begin with the language of the statute. Where a statute is subject to a plain meaning, the court need not engage in the imprecise exercise of rewriting rules that Congress has affirmatively enacted. Id. at 538. The Supreme Court observed:

> Our unwillingness to soften the import of Congress' chosen words even if we believe the words to lead to a harsh outcome is longstanding. It results from "deference to the supremacy of the Legislature, as well as recognition that Congressmen typically vote on the language of a bill." United States v. Locke, 471 U.S. 84, 95, 105 S.Ct. 1785, 85 L.Ed.2d 64 (1985)(citing Richards v. United States, 369 U.S. 1, 9, 82 S.Ct. 585, 7 L.Ed.2d 492 (1962)).
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> * * *
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> If Congress enacted into law something different from what it intended, then it should amend the statute to conform it to its intent. "It is beyond our province to rescue Congress from its drafting errors, and to provide for what we think . . . is the preferred result." United States v. Granderson, 511 U.S. 39, 68, 114 S.Ct. 1259, 127 L.Ed.2d 611 (1994)(concurring opinion). This allows both of our branches to adhere to our respected, and respective, constitutional roles. In the meantime, we must determine intent from the statute before us.

Lamie, 540 U.S. at 538-42. "'[T]he sole function of the courts -- at least where the disposition required by the text is not absurd -- is to enforce [the statute] according to its terms.'" Id. at 534 (*quoting* Hartford

Underwriters Ins. Co., v. Union Planters Bank, N.A., 530 U.S. 1, 6 (2000)).

The disposition required by the plain meaning of § 522(f)(2) is neither absurd nor demonstrably at odds with the intention of the drafters. In fact, it is consistent with the very strong policy favoring the liberal interpretation of exemption statutes in favor of the debtor to facilitate the fresh start. See In re Arrol, 170 B.R. F.3d 934, 937 (9th Cir. 1999). In enacting the Bankruptcy Reform Act of 1994, the legislature adopted the dissenting opinion in In re Simonson, 758 F.2d 103 (3rd Cir. 1985). H.R REP. NO. 103-835, at 53-54 (1994), *reprinted in* 1994 U.S.C.C.A.N. 3340, 3362-63. The Simonson dissent acknowledges that the overriding purpose of § 522(f) is to protect the debtor's homestead exemption. Simonson, 758 F.2d at 110. Indeed, reading the "debtor's interest in the property" to require that all liens be deducted from the value of only the debtor's partial interest is consistent with California law on enforcement of judgments. In the case of joint encumbrances, each co-owner's interest is subject to sale to satisfy the entire debt. Schoenfeld v. Norberg, 11 Cal. App. 3d 755, 766 (Cal Ct. App. (1st Cir.) 1970). Moreover, courts are to attribute to the words of a statute "'their ordinary, contemporary, common meaning.'" Pioneer Inv. Services Co. v. Brunswick Assocs. Ltd. Partnership, 507 U.S. 380, 388 (1993)(*quoting* Perrin v. United States, 444 U.S. 37, 42 (1979)). The common reading of the "debtor's interest in the property" suggests something more limited than the entire property when the debtor jointly owns the property.

Applying the plain meaning of § 522(f)(2)(A), the sum of the Caletti Associates judicial lien, all other liens on the property, and the amount of the exemption that the debtor could claim if there were no liens on the property is $840,673.

Washington Mutual deed of trust	$550,000
Chase Manhattan Bank deed of trust	50,000
Caletti Associates abstract of judgment	165,673
Homestead exemption	75,000
Sum of all liens and exemption	$840,673

The sum of $840,673 exceeds the value of the debtor's interest in the absence of liens, $468,000, by $372,673, which is the extent of the impairment. Because the extent of the impairment exceeds the amount of the judicial lien, the Caletti Associates lien is avoided in its entirety.

CONCLUSION

For the reasons stated herein, the judicial lien of Caletti Associates is avoided in its entirety pursuant to § 522(f).

Good cause appearing, IT IS SO ORDERED.

*** * * END OF ORDER * * ***

Case No. 04-52528-MM

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